THE HON'BLE MR JUSTICE L. NARASIMHA REDDY

Writ Petition No.4243 of 2007

Dated 16-03-2007

Between:
Dr.A.Chandrasekhar

…Petitioner

And

M/s Vijaya Co.Operative Urban Bank Ltd., and another

…Respondents

THE HON'BLE MR JUSTICE L. NARASIMHA REDDY

Writ Petition No.4243 of 2007

ORDER:

The 2nd respondent obtained loan of Rs.12,50,000/- from the 1st respondent, on 15-03-2001. As a security for repayment of the loan, it mortgaged an item of immovable property, being House No.8-2-293/82/L/13/A/B (Plot No.13/A/B) admeasuring 430 sq. yards situated in Sy.No.403/1 (old), 102(1) (new), Shaikpet and Hakimpet villages, Golconda Mandal, Hyderabad. Since the 2nd respondent failed to repay the amount, the 1st respondent initiated recovery proceedings, in ARC No.345 of 2002, before the Divisional Co-operative Officer, Golconda Division. An award was passed on 28-02-2003, and a recovery certificate was issued. Aggrieved thereby, the 2nd respondent and two others filed CTA No.131 of 2003 before the A.P. Co-operative Tribunal, at Hyderabad.

Petitioner states that he has purchased the mortgaged item of property through a registered sale deed dated 04-06-2003, for a consideration of Rs.30 lakhs. On coming to know that the said property is being proceeded against, for recovery of the amount, he got himself impleaded in the C.T.A. The C.T.A. was ultimately dismissed with certain directions. Petitioner submits that he is willing to pay the amount, borrowed by the 2nd respondent, to get the mortgage foreclosed, and when he approached the 1st respondent, for this purpose, they are not accepting the offer. Hence, this writ petition.

Heard Sri V. Ravi Kiran Rao, learned counsel for the petitioner;

Sri D. Goverdhana Chary, learned Standing Counsel for the 1st respondent, and Sri B.Viswanatha Reddy, learned counsel for the 2nd respondent.

The petitioner purchased the property, which was mortgaged by the 1st respondent, in favour of the 2nd respondent, after the mortgage came into existence. Inasmuch as what he purchased is, only an equity of foreclosure, the petitioner came forward to pay the amount due. However, the 2nd respondent had raised an objection for the payment of the amount by the petitioner.

The 2nd respondent filed O.S.No.252 of 2006 in the Court of X Additional Chief Judge, City Civil Court, Hyderabad, for cancellation of the sale deed in favour of the petitioner. Obviously, at his instance, the 1st respondent refused to receive the amount, offered by the petitioner.

The Transfer of Property Act does provide for payment of the borrowed amount, by a transferee, of a mortgaged property, provided that there is no dispute as to the transfer. The clearance of the debt by a transferee of mortgaged property, would bring about foreclosure. Where, however, there is a serious dispute, as to the very transfer, the mortgagee cannot be compelled to accept the payment by a transferee of the mortgaged property.

The anxiety of the petitioner is quite understandable. Having purchased the property, he is justified in making attempt to get the mortgage foreclosed. If the 2nd respondent itself is willing to clear the debt, the petitioner cannot insist that his offer alone must be accepted. This Court is of the view that the interests of justice would be protected by directing that, in the event of the property being brought to sale, and any failure on the part of the

2nd respondent to clear the debt, it shall be open to the petitioner to pay the amount due.

Hence, the writ petition is disposed of, directing that, in case the property, mortgaged by the 2nd respondent, with the

1st respondent, and subsequently purchased by the petitioner;

is brought to sale, in pursuance of an award passed by the Deputy Registrar of Co-operative Societies; and that the 2nd respondent fails to make the payment, before the due date, it shall be open to the petitioner to clear the debt, and work out his remedies thereon.

The 1st respondent is directed to issue notice of any sale of the property to the petitioner also, apart from the 2nd respondent.

There shall be no order as to costs.

L. NARASIMHA REDDY, J.

Dt.16-03-2007

***Note**:*
c.c. in one week.
(B/O) KO